(3)

No. 91-783

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

OWENS-ILLINOIS, INC.,
Petitioner,

v.

GLASS, MOLDERS, POTTERY, PLASTICS AND ALLIED WORKERS INTERNATIONAL UNION, AFL-CIO and LOCAL UNION NO. 4,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

1. Did the District Court correctly conclude that the Arbitrator's remedy drew its essence from the collective bargaining agreement, where the Arbitrator relied on the formula for calculating relief set forth in the contract?

2. Did the District Court properly uphold the Arbitrator's contractual authority to impose a remedy, where the Union consistently sought a remedy from the Arbitrator and the Company never objected to the Arbitrator's jurisdiction over the remedy?

3. Should this Court deny the petition for certiorari where the sole basis for the petition is the Company's disagreement with the Arbitrator's interpretation of the collective bargaining agreement to remedy the Company's contractual breach before the parties negotiated over the matter?

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For the reasons stated herein, respondents respectfully request that this Court deny the petition for a writ of certiorari, seeking reversal of the judgment of the United States Court of Appeals for the Third Circuit, which summarily affirmed without opinion the enforcement of a labor arbitration award by the United States District Court for the District of New Jersey.

OPINIONS BELOW

The United States Court of Appeals for the Third Circuit entered a judgment summarily affirming, without a written opinion, the District Court's decision (A. 1).[1] On February 4, 1991, the United States District Court for the District of New Jersey issued a written opinion reported at 758 F.Supp. 962 (D. N.J. 1991), which granted the motion for summary judgment by respondents Glass, Molders, Pottery, Plastics and Allied Workers International Union, AFL-CIO and its Local Union No. 4 (hereinafter "the Union") to enforce a labor arbitrator's award and denied the cross-motion filed by Owens-Illinois, Inc. (hereinafter "the Company", "Owens" or "the petitioner"), to vacate that award (A. 3-32). The arbitration award, finding that the Company breached its collective bargaining agreement with the Union was unreported and issued on July 3, 1990 (A. 35-60).

JURISDICTION

The judgment of the Court of Appeals was entered on July 23, 1991 (A. 1). A timely petition for rehearing was denied on August 15, 1991. Petitioner has invoked the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a), provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations,

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[1] As used herein, "A." followed by the page number, refers to the Appendix accompanying the petition for a writ of certiorari; "J.A." followed by the page number, refers to the Joint Appendix filed in the Court of Appeals.

may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

COUNTERSTATEMENT OF THE CASE

A. The Sale of the Glassboro Plant

For over 25 years, the Union and the Company have been parties to a series of collective bargaining agreements covering the terms and conditions of employment for employees at petitioner's metal closure plant in Glassboro, New Jersey. The most recent contract between the parties became effective April 1, 1986, and was to continue in effect through March 31, 1989 (A. 36; J.A. 134-167). The agreement provided that all disputes concerning grievances not settled could be taken to arbitration (J.A. 143) and declared that the Arbitrator's decision "shall be final and binding upon both parties." (*Id.*).

On or about January 5, 1989, petitioner sold its Glassboro plant pursuant to an Asset Purchase Agreement (hereinafter "the Agreement") with Anchor Hocking Corporation (hereinafter "Anchor") (J.A. 360-411). Under the terms of this Agreement, Anchor paid Owens approximately thirty-six million dollars ($36,000,000) for the Glassboro plant (A. 5; J.A. 365).

Pursuant to Section 13(b) of the Agreement, as a condition of the sale, Owens expressly absolved Anchor from assuming any obligation under any collective bargaining agreement (A. 40-41; J.A. 402).[2] The Agreement also

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[2] The pertinent provision provides:

Employee Agreements, Including Collective Bargaining Agreements.

It is understood and agreed that this Agreement does not obligate Buyer to assume any of Seller's liabilities or obligations under any collective bargaining agreement or other em-

provided that at the time of the sale, all of the Glassboro employees would cease being employed by Owens, Anchor would have no obligation to hire any of these employees, and petitioner could not reemploy any of these employees within six months of the closing (J.A. 401-402).

Although certain representatives of the Union heard about the Asset Purchase Agreement in November of 1988, the Union's representatives were informed that the transaction was not final and was dependent upon government approval (A. 9, 36; J.A. 368). Prior to the sale of the Glassboro plant, Owens never provided the Union with a copy of the Asset Purchase Agreement (J.A. 537, 547)[3] or informed the Union that this Agreement absolved Anchor from assuming the existing Union contract (J.A. 533, 547-548).[4] As noted by the Arbitrator, Owens' labor relations personnel were not con-

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ployment agreement, express or implied, relating to persons employed by Seller, and that, even if Buyer elects to assume Seller's rights and prospective obligations under any such collective bargaining agreement or other employment agreement, in no event will Buyer assume any liability or obligation arising out of any such collective bargaining agreement or other employment agreement relating to any transaction, event or activity occurring or condition or state of facts existing at or prior to the Closing (J.A. 402) (emphasis added).

[3] On February 7, 1989, one month after the sale, John Frechette, Owens' Vice President for Labor Relations, wrote that he was still unable to provide the Union with a copy of this Agreement (J.A. 172). The Union did not obtain a copy of the Agreement until four months after the sale.

[4] On the evening of January 3, 1989, approximately thirty-six (36) hours before the sale of the Glassboro facility to Anchor, the Union was informed for the first time that it was unlikely that Anchor would assume the existing Owens collective bargaining agreement. At that time, the explicit provisions in the Asset Purchase Agreement were not divulged to the Union (A. 9; J.A. 533).

sulted regarding the terms of the Asset Purchase Agreement (A. 40).

On January 5, 1989, Owens sold the Glassboro plant to Anchor in accordance with the terms of the Asset Purchase Agreement. On that date, the Glassboro, New Jersey plant was closed as an Owens facility, the plant was no longer run by Owens management and no longer manufactured Owens product. Workers employed at the Glassboro facility were no longer Owens employees, no longer eligible for Owens benefits, or subject to the protections of the existing Owens collective bargaining agreement (J.A. 315-321).

Upon acquiring the Glassboro facility, Anchor offered employment to all production and maintenance workers as new employees (A. 37-38; J.A. 315-316). Aware that it was not bound by the existing Union contract with Owens, Anchor instituted a number of unilateral and substantial changes in the terms and conditions of employment, effective immediately, including the elimination of severance pay, cost of living, personal days off, successorship provisions, advance notice for layoffs and plant closing, and no-subcontracting guarantees. Anchor also decreased employer contributions to retiree benefits, and increased employee contributions for medical benefits (A. 6-8, 37-39; J.A. 317-321).

Although Anchor eventually entered into a new contract with the Union which was effective April 1, 1989, the Union was unable to obtain from Anchor a number of contractual provisions previously contained in its prior agreement with Owens, including any severance pay provisions; a successor, transferee and assignee clause; a no subcontracting clause; notice and insurance protection provisions in the case of a plant closing; and a number of other provisions from the prior Owens contract. All of these provisions were eliminated by Anchor when it purchased the plant on January 5, 1989 (J.A. 536).

B. The Union's Grievance and Underlying Arbitration Hearing.

Since 1971, contracts between Owens and the Union, included specific successorship provisions applicable in the event of sale. Article 33 of the contract in force at the time of the sale stated:

> This contract shall be binding upon the parties hereto, their successors, transferees and assignees. *In the event the Company sells* or transfers this plant, *this agreement shall remain in full force and effect and be binding upon the purchaser* or transferee (J.A. 160) (emphasis added).

Similarly, Article 31 provided an explicit severance formula if the Glassboro plant was closed as an Owens facility.

> If the Company elects to permanently close the Glassboro plant or a department, severance shall be paid on the basis of 25 hours per credited year of service with a maximum of 750 hours payable (J.A. 159).[5]

Finally, Article 19, Section 17 of the collective bargaining agreement provided for certain enhanced pension benefits to a discrete group of long-term employees if the Glassboro plant was permanently closed as an Owens facility (J.A. 147).

The Union contended that Owens breached its contract when it failed to condition the sale of the Glassboro plant upon the buyer assuming the existing collective bargain-

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[5] Contracts between the parties contained provisions for severance benefits since 1965 (J.A. 415-447). This specific severance formula was added in the 1986 Agreement (J.A. 159). At the time of the Glassboro sale, Owens maintained a handbook for its salaried employees, which precluded the payment of severance in the event of a sale of a plant as a going concern to another company (J.A. 501). Article 31 of the Company's contract with the Union omitted this restriction (J.A. 159).

ing agreement, and by refusing to pay severance benefits or make additional pension payments when the Glassboro plant was permanently closed as an Owens facility (J.A. 168, 170-171, 175-176).

On January 6, 1989, the Union filed a timely grievance, seeking to have "[a]ll affected employees . . . made whole for all loss [*sic*] incurred as a result" of Owens' contractual breach (J.A. 168). The grievance was denied (J.A. 169). In May of 1989, Owens and the Union agreed to submit the matter to arbitration (J.A. 170-174). Arbitrator Rolf Valtin held arbitration hearings on September 15 and October 25, 1989 during which time both sides had an opportunity to present witnesses, documents and any evidence in support of their position.

No transcript was made of the arbitration proceedings. As the Arbitrator noted, the parties never submitted a joint written statement of the issue to be decided (A. 41-42). When the parties were unable to agree upon a joint submission of the issues, the Arbitrator stated that both the Union and the Company, as part of their post arbitration briefs, should submit their version of the issues for review, and he would set forth the issues in his decision and award (J.A. 529, 544).

The Union framed the issues to be decided as whether the Company's conduct violated Articles 31 and 33 and Article 19, Section 17 of the parties' contract and "[i]f so, what is the proper remedy?" (A. 41-42). Owens never objected to the Union's statement of the issues or the Union's specific request regarding the remedy. Other than the grievance and the statement of the issues contained in the post arbitration briefs, the parties did not provide the Arbitrator any other written submission concerning the scope of the issues to be adjudicated. The Company never requested in writing that the Arbitrator refrain from resolving the remedy as part of his award, or that the parties negotiate the remedy before the Arbitrator rendered his decision (J.A. 531-532, 546).

Nothing in the collective bargaining agreement between the parties limited the Arbitrator's authority to decide a remedy for a contract violation or required that the parties negotiate concerning the remedy if a contract breach is found (J.A. 134-167). Further, any proposed modification in the contract must be approved by the Company, the International Union and the Local Union involved (J.A. 137). The Company does not contend that a modification concerning the Arbitrator's authority was ever approved.

During the arbitration hearing, the Union produced a witness concerning damages and submitted a number of exhibits regarding the losses suffered by Union members as a result of the Company's contract breach. Union Exhibit 1 described the elimination of vital contract terms which occurred when Anchor purchased the plant and was not required to assume the collective bargaining agreement (J.A. 315-321). Union Exhibits 7, 8 and 9 (J.A. 448-496) described the financial losses suffered by specific individuals due to the Company's contract breach, including the approximate $2.0 million loss of severance and pension benefits suffered by the Glassboro employees and the increase in insurance payments.[6] On appeal, the

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[6] Union Exhibit 8 (J.A. 472-495), which was introduced into evidence by the Union during the arbitration, establishes the exact amount of severance owed to each bargaining unit member at the Glassboro plant due to the Company's breach, in accordance with the formula in Article 31. When the first of the exhibits concerning financial losses suffered by individual members was introduced into evidence at the arbitration hearing, the Company and the Union agreed that any disputes regarding the amount of monies owed to specific individuals would be negotiated by the parties while the Arbitrator retained jurisdiction. If negotiations failed, the matter would be returned to the Arbitrator for final determination. This agreement was reflected in the Arbitrator's decision (A 60). The Union never agreed that the arbitration would be bifurcated, that the parties would negotiate concerning the remedy if the Arbitrator found a contract breach, or that the Arbitrator would not decide the remedy as a part of his initial decision (J.A. 531-532, 546-547).

Company has never contested the Union's figures or the accuracy of the calculations as applied to each individual employee.

C. The Arbitrator's Decision and Award.

On July 3, 1990, Arbitrator Valtin issued his opinion and award (A. 35-60). The Arbitrator concluded, after carefully scrutinizing the contractual language, that in failing to condition the sale of the Glassboro plant upon the buyer assuming the existing collective bargaining agreement, the Company explicitly violated the successorship provisions of Article 33 of the contract (A. 47-48). The Arbitrator stressed that this was not a case where non-assumption of the collective bargaining agreement was overlooked during negotiation of the sales agreement. Rather, all of the negotiators were aware of the requirement of Article 33 and acted in "plain defiance" of it (A. 48). Finally, the Arbitrator considered and rejected each of the Company's objections to a finding that it breached Article 33, including Owens' claim that the parties' contract negotiations evidenced that Owens should not be held liable for any breach; and if there was a violation, the purchaser, who was not a party to the arbitration, should be held responsible (A. 49-52). In its petition to this Court, the Company does not challenge the Arbitrator's finding of a contract breach.

In finding a violation of Article 33, the Arbitrator emphasized, and the Company has never disputed, that the appropriate remedy would be to set aside the sale and "undo what has wrongfully taken place." (A. 53). The Arbitrator explained that such a remedy would be an exercise of "enormous difficulty" and "a morass approaching impossibility." (A. 53, 57). Rather, the Arbitrator stressed that he would treat the claim for severance pay under Article 31, and for a pension under Article 19, Section 17, "as linked with the violation of Article 33 and, in the light of the holdings I am making on them, as

disposing of the remedy question under Article 33." (A. 53). In support of this approach, the Arbitrator recognized that a claim for severance pay or pension benefits would have never arisen had "the Agreement remained in effect while the plant continued to operate (under either O-I or Anchor auspices)." (A. 53).

In ordering the payment of severance benefits in accordance with the contractual formula established under Article 31 to rectify the Article 33 breach, the Arbitrator stressed that the severance provisions of Article 31 would never have become operative had the Company ensured that the buyer assumed the contract (A. 56). The Arbitrator further observed that although the plant was not permanently closed, as that term was commonly understood under Article 31, it was essential to focus on the reality of what occurred. The Arbitrator emphasized that in violating Article 33, Owens "in effect abandoned the employees" and that the Company's conduct created hardships comparable to the types of losses which the severance pay provisions of Article 31 were designed to ameliorate (A. 57-58).[7]

The Arbitrator rejected Owens' claim that the payment of severance amounted to a windfall. Rather, he explained that Owens' refusal to condition the sale upon the purchaser assuming the contract favorably impacted upon Owens' ability to obtain the $36 million dollar purchase price for the plant, and payment of severance benefits would compensate the affected employees for the losses they sustained as a result of the Company's contractual breach (A. 58-59).

Although the Arbitrator decided to rectify the breach of Article 33 by awarding severance and pension benefits in accordance with the formula set forth in Article 31 and

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[7] The Arbitrator relied upon this same rationale to award pension benefits under Article 19, Section 17 of the Agreement to further rectify Owens' breach of Article 33 (A. 59).

Article 19, Section 17, the Arbitrator alternatively found an independent breach of Article 31 and Article 19, Section 17. The Arbitrator held that Owens' abandonment of its workforce resulted in an undisputed diminution of benefits, amounted to a permanent closing and the type of severe economic loss which triggered compensation pursuant to the parties' contract (A. 56-59).

Finally, the Arbitrator stressed that if "implementing difficulties develop and cannot be resolved through consultation between the parties, either party is free to return the case to me for final resolution." (A. 60).[8]

D. The District Court's Decision.

The District Court enforced the Arbitrator's award, concluding that the Arbitrator did not act in manifest disregard of the collective bargaining agreement when he found that the Company acted in violation of the contract and awarded severance pay and pension benefits to rectify the breach (A. 3-32).

The District Court carefully reviewed the Arbitrator's analysis concerning the Company's breach of the successorship provisions and concluded that it was "grounded in sound principles of contract construction." (A. 22). The District Court considered and rejected each of the Company's claims that the Arbitrator's liability deter-

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[8] In its petition, Owens claims that the Arbitrator's premature remedy "deprived the Company of the opportunity to negotiate with the Union." (Pet. at 8). On the contrary, Owens had previously negotiated with the Union, as the remedy which the Arbitrator applied was based exclusively on the explicit formula in the parties' collective bargaining agreement. Further, the Company disingenuously argues that it "was never able to address whether the Union failed to mitigate damages . . . because the Union had advance knowledge of the sale and failed to make any effort to encourage Anchor to assume the labor agreement . . ." (Pet. at 8, n.4). However, the Company previously made this very argument to the Arbitrator (A. 50) who emphatically rejected it as "plain burden-switching." (A. 51).

mination should be set aside (A. 21-26). In its petition, the Company does not challenge that portion of the District Court's decision.

The District Court also upheld the Arbitrator's remedy, finding that the award of severance pay and pension benefits for a breach of the successorship clause "[drew] its essence from the collective bargaining agreement." (A. 27, at n.10).[9] Alternatively, the District Court stressed that the Arbitrator's opinion, in light of his finding that a plant closing occurred, established an independent violation of Article 31 and Article 19, Section 17 of the contract, and thus justified payment of damages in accordance with those provisions (A. 26-27).[10] The District Court rejected the Company's assertion that the parties did not submit the remedy issue to the Arbitrator. The District Court observed that there was no evidence of any restrictions on the Arbitrator's remedial authority (A. 29-30). The Union specifically requested the remedy in its issue submission and Owens never objected to it, and the Arbitrator's remedy was based upon the contractual language (*Id.*). The District Court found most importantly that "arbitrators have broad discretion in establishing the scope of the issue before them and in formulating remedies." (A. 29-30). The District Court recognized that where it cannot be said that the Arbitrator "exceed[ed] the scope of his contractual authority,"

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[9] The District Court stressed that compelling severance payments upon the sale of assets even where the employees continued to work for the purchaser, especially where the purchaser as here does not provide severance payments, is consistent with other arbitration decisions (A. 26, at n.9).

[10] Although Owens alleges that the trial court engaged in independent fact-finding (Pet. at 15), the District Court simply repeated the off-cited maxim that "ambiguity in an arbitrator's opinion is not grounds to vacate the award" (A. 27), and recognized that in finding a "permanent closing" triggering the requirements of Article 31 and Article 19, Section 17, the Arbitrator did nothing more than interpret the collective bargaining agreement (A. 27-28).

the court's inquiry "must end and his remedy must be enforced." (A. 30).

Finally, the trial court rejected the Company's claim that the award was excessive. The award of severance pay, which has adequate support in the record, was not an approximation of damages but "calculated from the precise formula found in the collective bargaining agreement" and thus left "no basis on which to conclude that this award does not draw its essence from that agreement." (A. 31). Further, the District Court stressed that although the Company could have avoided this problem either by waiting "three months before selling the plant or, alternatively, to negotiate for Anchor to assume the agreement for the brief period remaining," it obviously had its "own reasons for consummating the sale at the time and in the manner in which [it] did." (A. 30-31). Therefore, Owens could not at this point complain about the consequences flowing from its disregard of its contractual obligations.

REASONS WHY THE PETITION SHOULD BE DENIED

IN SEEKING REVIEW ONLY OF THAT PORTION OF THE DISTRICT COURT'S OPINION CONCERNING THE ARBITRATOR'S REMEDY, PETITIONER HAS FAILED TO RAISE ANY SUBSTANTIAL REASON WARRANTING PLENARY REVIEW BY THIS COURT.

This case involves a "garden variety" challenge by an unhappy litigant to a labor arbitration award. The Company previously lost at arbitration, lost before the United States District Court for the District of New Jersey, and lost again before the United States Court of Appeals for the Third Circuit. Although not contesting the Arbitrator's finding of a contractual violation, or the Arbitrator's authority to ultimately remedy this uncontested breach, the Company is asking this Court to stay the Arbitrator's remedy until the parties have had an

opportunity to negotiate over the matter, simply because petitioner disagrees with the Arbitrator's contractual interpretation.

Despite the Company's best efforts to justify Supreme Court review by pretending that the District Court's opinion conflicts with decisions from other circuits, the Company's petition neither raises a genuine conflict nor a question of public importance warranting consideration by this Court. After having "contracted to have disputes settled by an arbitrator chosen by [the parties] rather than by a judge," *United Paperworkers International Union v. Misco*, 484 U.S. 29, 37 (1987), the Company may not avoid the Arbitrator's decision merely because it feels he reached an incorrect result.

The principles applicable to judicial review of labor arbitration awards are well established and were properly applied by the District Court. This case raises no conflict in the circuits, or any issue warranting Supreme Court review. Indeed, the Third Circuit Court of Appeals did not consider any of the Company's objections significant enough to justify a written opinion. The petition for a writ of certiorari should therefore be denied.

1. This Court has long recognized that because it "is the arbitrator's construction [of the collective bargaining agreement] which was bargained for . . . courts have no business overruling him because their interpretation of the contract is different from his." *Steelworkers v. Enterprise Wheel and Car Corp.*, 363 U.S. 593, 599 (1960). "[A]s long as the arbitrator is even arguably construing or applying the contract . . . that a court is convinced he committed serious error does not suffice to overturn his decision." *Misco*, 484 U.S. at 38. Unless the Arbitrator's decision does not "dra[w] its essence from the collective bargaining agreement," *Enterprise Wheel and Car*, 363 U.S. at 597, "a court is bound to enforce the award and is not entitled to review the merits of the

contract dispute." *W. R. Grace and Co. v. Rubber Workers*, 461 U.S. 757, 764 (1983).

2. The same broad deference accorded the Arbitrator's finding of a contractual breach is applicable to the Arbitrator's choice of a remedy to rectify that violation.

> When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. *This is especially true when it comes to formulating remedies.* There, the need is for flexibility in meeting a wide variety of situations. [*Enterprise Wheel & Car*, 363 U.S. at 597 (emphasis added)].

When the Arbitrator determines "remedies for contract violations that he finds, courts have no authority to disagree with his honest judgment in that respect." *Misco*, 484 U.S. at 38. "It is not for [the Court] to decide whether [it] would have awarded this particular relief, or whether the arbitrator correctly interpreted the contract. Those questions are, in all but the clearest cases, the arbitrator's business, not ours." *United Electrical, Radio and Machine Workers of America, Local 1139 v. Litton Microwave Cooking Products*, 728 F.2d 970, 972 (8th Cir. 1984) (*en banc*). To hold to the contrary, "the speedy resolution of grievances by private mechanisms would be greatly undermined." *Misco*, 484 U.S. at 38.

3. In its petition, the Company does not challenge the Arbitrator's finding of a contractual breach or his proposed remedy. Rather, the Company contends that the remedy should have been deferred until the parties "attempted to resolve [it] through negotiation" (Pet. at 13), and thus the "district court's decision to enforce a remedy that the Arbitrator had no authority to make is contrary to decisions rendered by other United States Courts of Appeals." (Pet. at 11). The Company's assertion is simply untrue.

The District Court recognized that an Arbitrator "may not impose a remedy which directly contradicts the express language of the collective bargaining agreement" (A. 29), but properly concluded that the Arbitrator did not exceed the scope of his authority in this case (A. 29-30). First, there is no evidence of any restrictions ever being placed upon the Arbitrator's authority. The parties' contract gave the Arbitrator full authority to remedy a contract breach, and nothing in the parties' written submission restricted the Arbitrator's power.

Second, the evidence is undisputed that the Union consistently pressed for a remedy before the Arbitrator. The grievance explicitly asked the Arbitrator to make members "whole" for the Company's contract breach; the Union introduced substantial evidence at the hearing regarding damages; and the Union's issue submission specifically asked the Arbitrator to remedy the Company's contract violation.

Third, the remedy proposed was not based upon the Arbitrator's personal predilection, nor was it barred by any contractual proscription. Rather, it was based entirely upon the explicit formula set forth in the parties' collective bargaining agreement.

Finally, the Company participated in the hearing without ever contesting the Arbitrator's authority to decide the remedy. Even before this Court, Owens has not challenged the District Court's finding that there was absolutely no evidence that the Arbitrator was "ever notified . . . of any restrictions on his remedial authority." (A. 29). As such, there was no dispute as to any material facts and the District Court properly held that "there is no basis [to] conclude that the arbitrator exceeded the scope of his authority." (A. 29). The principles in the District Court's opinion neither conflict with decisions rendered by United States Courts of Appeal nor raise an important issue warranting review by this Court.

4. Moreover, the Company may not await the action of an arbitration proceeding to challenge the Arbitrator's remedial authority. "Once the parties have referred the matter to an arbitrator, they are bound by his decision . . . and may not later challenge his authority to resolve the dispute." *Johnson v. United Food and Commercial Workers Local No. 23*, 828 F.2d 961, 965 (3d Cir. 1987) (citation omitted). "If a party voluntarily and unreservedly submits an issue to arbitration, he cannot later argue that the arbitrator had no authority to resolve it." *Jones Dairy Farm v. Local No. P-1236, UFCW*, 760 F.2d 173, 175 (7th Cir. 1985) (and citations therein). A party may not submit a "claim to arbitration, await the outcome, and, if the decision is unfavorable, then challenge the authority of the arbitrator to act." *Ficek v. Southern Pacific Company*, 338 F.2d 655, 657 (9th Cir. 1964), *cert. denied*, 380 U.S. 988 (1965).

Here, Owens participated in the arbitration hearing without ever informing the Arbitrator that it contested his authority to adjudicate the remedy, and without objecting to the Union's written issue submission requesting the Arbitrator to remedy the Company's contract breach. Where there is no contractual or written limitation upon the Arbitrator's remedial powers, the Company may not await receipt of an adverse award to object to the Arbitrator's authority. To hold otherwise would "frustrate . . . the strong federal policy favoring the speedy resolution of labor disputes through arbitration." *Teamsters Local Union No. 764 v. J. H. Merritt and Company*, 770 F.2d 40, 43 (3d Cir. 1985).[11]

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[11] Where, as here, "there is no record evidence that the employer in proceedings before the arbitrator challenged his authority to resolve the submitted grievance . . . [t]hat failure to object . . . is . . . an independent bar to consideration of such an objection" when the matter arises in federal court. *High Concrete Structures, Inc. v. Local 166*, 879 F.2d 1215, 1219 (3d Cir. 1989); *H. K. Porter Company v. United Saw, File & Steel Products Workers*, 406 F.2d 643, 649 (3d Cir.), *cert. denied*, 395 U.S. 964 (1969).

5. Moreover, the District Court's opinion comports with this Court's recognition that arbitrators are accorded broad discretion in determining all procedural matters related to the arbitration.

> Once it is determined, as we have, that the parties are obligated to submit the subject matter of a dispute to arbitration, 'procedural questions' which grow out of the dispute and bear on its final disposition should be left to the arbitrator. [*John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557 (1964)].

Courts have uniformly recognized that the same "deference that is accorded to an arbitrator's interpretation of the collective bargaining agreement should also be accorded to an arbitrator's interpretation of the issue submitted." *Mobil Oil Corp. v. Independent Oil Workers Union*, 679 F.2d 299, 302 (3d Cir. 1982); *Lattimer-Stevens Company v. United Steelworkers of America District 27*, 913 F.2d 1166, 1170 (6th Cir. 1990); *Federated Department Stores v. United Food and Commercial Workers Union, Local 1442*, 901 F.2d 1494, 1498 (9th Cir. 1990).

In this case, based upon the grievance and the issues submitted, the Arbitrator rendered his interpretation of the scope of the submission. This was precisely what he told the parties he would do when during the hearing they were unable to agree upon the scope of the issue. In enforcing the Arbitrator's remedy, the District Court properly recognized that "arbitrators have broad discretion in establishing the scope of the issue before them and in formulating remedies." (A. 30). In its petition, the Company is asking this Court to ignore the Arbitrator's broad discretion to formulate arbitral issues and instead to have the courts engage in independent fact-finding as to the parties' intent when the Union submitted its grievance. Permitting such plenary review would undermine the "strong federal policy favoring arbitration of labor disputes." *Gateway Coal Co. v. Mine Workers*, 414 U.S. 368, 382 (1974).

"The reasons for insulating arbitral decisions from judicial review are grounded in the federal statutes regulating labor-management relations . . . [which] reflect a decided preference for private settlement of labor disputes without the intervention of government." *Misco*, 484 U.S. at 37. The Labor Management Relations Act of 1947, 61 Stat. 154, 29 U.S.C. § 173(d) provides that "[f]inal adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement."

This congressional policy "can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play." *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 566 (1960). "Courts are not to usurp those functions which collective bargaining contracts have properly 'entrusted to the arbitration tribunal.'" *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562-563 (1976) (*quoting American Mfg. Co.*, 363 U.S. at 569). Otherwise, "plenary review by a court of the merits would make meaningless the provisions that the Arbitrator's decision is final, for in reality, it would almost never be final." *Enterprise Wheel and Car*, 363 U.S. at 599.

Further, adopting the Company's view would require the judiciary "to determine, case by case, the exact scope of submission in the endless number of grievances and disputes that inevitably occur between employer and employees." *Mobil Oil Corp.*, 679 F.2d at 302. Such a result contravenes the "strong congressional preference for the private dispute settlement mechanisms agreed upon by the parties." *Buffalo Forge Co. v. Steelworkers*, 428 U.S. 397, 407 (1976).

7. Finally, petitioner requests review by this Court because the District Court purportedly engaged in independent fact-finding to upset the Arbitrator's "explicit and

unequivocal finding that the Glassboro plant was *not* permanently closed within the meaning of Article 31 of the labor agreement." (Pet. at 15) (emphasis in original). Contrary to the Company's assertion, the Arbitrator explicitly found that Owens' conduct effectively resulted in the permanent closing of the Glassboro facility, and the District Court merely recognized that this was a permissible finding under the parties' contract (A. 26-27).

Although the Arbitrator observed that "by common understanding of the term, the plant was not permanently closed" (A. 56), he went on to stress that in order to understand the "permanent closing" severance language in Article 31, it is necessary to look at the real state of affairs concerning the Glassboro plant (A. 56-57). Further, the Arbitrator opined that the result of the Company's conduct was that "in effect [the Company] abandoned the employees" (A. 57) and that the losses the employees suffered were comparable to those "hardships which [the severance pay provisions of] Article 31 is designed to cushion." (A. 57-58). Contrary to the Company's position, the Arbitrator was interpreting and not modifying the labor contract when he found that there was a permanent plant closing thereby warranting his proposed remedy.[12]

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[12] As the District Court noted, the Arbitrator's determination "is consistent with other decisions which have compelled severance payments upon the sale of assets even where the employees continued to work for the purchaser and, especially where, as here, the purchaser does not provide severance benefits." (A. 26, at n.9). *See e.g., Atlantic Richfield Company*, 91 LA 835 (Nelson, 1988); *Ala Moana Volkswagen*, 91 LA 1331 (Tsukyama, 1988); *TPC Liquidation, Inc.*, 88 LA 696 (Lumbley, 1987); *Arco Metals Co.*, 88 LA 1209 (Berkowitz, 1987); *St. Regis Paper Company*, 85-1 ARB ¶ 8106 (O'Connell, 1984); *Allied Chemical Corp.*, 81 LA 514 (Epstein, 1983); *International Paper Company*, 79-1 ARB ¶ 8200 (Sander, 1978); *Stauffer Publications, Inc.*, 77-1 ARB ¶ 8314 (Madden, 1977); *Ward Foods, Inc.*, 61 LA 1032 (Dash, 1973). Similar conclusions have been reached by a number of Courts of

In upholding the Arbitrator's severance pay remedy, the District Court did not engage in fact-finding. Rather, the District Court recognized that the Arbitrator's award was ambiguous and could be read as having found that the sale resulted in a permanent closing, thereby triggering the severance and pension provisions of Articles 31 and 19 (A. 26-27). Ambiguity in an Arbitrator's opinion, even if evidencing that an arbitrator may have exceeded his authority, is never grounds to vacate an award.

> *A mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award.* Arbitrators have no obligation to the court to give their reasons for an award. To require opinions free of ambiguity may lead arbitrators to play it safe by writing no supporting opinions. This would be undesirable for a well-reasoned opinion tends to engender confidence in the integrity of the process and aids in clarifying the underlying agreement. [*Enterprise Wheel and Car*, 363 U.S. at 598 (emphasis added)].

"[E]ven when the basis for the arbitrator's decision may be ambiguous . . . a court is bound to enforce the award and is not entitled to review the merits of the contract dispute." *W. R. Grace & Co. v. Rubber Workers*, 461 U.S. at 764.

The District Court's holding was not predicated upon independent fact-finding but on an appropriate reading of the Arbitrator's decision. Where the Arbitrator concluded that the sale of the Glassboro facility amounted to a permanent closing of the plant, an award of severance and

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Appeals. *See e.g., Bellino v. Schlumberger Technologies, Inc.*, 944 F.2d 26, 31 (1st Cir. 1991); *Ulmer v. Harsco*, 884 F.2d 98, 102-103 (3d Cir. 1989); *Harris v. Pullman Standard, Inc.*, 809 F.2d 1495, 1498 (11th Cir. 1987); *Blau v. Del Monte Corp.*, 748 F.2d 1348, 1354-1355 (9th Cir. 1984).

pension payments is clearly warranted under the explicit terms of the parties' contract.

Petitioner seeks review of the District Court's decision not because of any conflict between the circuits, or to ensure that lower courts properly review arbitration decisions (Pet. at 16), but because it believes this Court should adopt Owens' view of the appropriate remedy for the Company's admitted contract breach. However, "a federal court may not overrule an arbitrator's decision simply because the court believes its own interpretation of the contract would be the better one." *W.R. Grace and Co.*, 461 U.S. at 765. The District Court conscientiously applied well-settled labor arbitration principles to the circumstances of this case, and petitioner has not demonstrated any reason why the District Court's decision warrants plenary review by this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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